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September 1, 2015

Gerald Etchingham
Associate Chief Administrative Law Judge
National Labor Relations Board
901 Market Street, Suite 300
San Francisco, California 94103-1779

Re: Shamrock Foods and Shamrock Farms Dairy Division
Case 28-CA-150157

Dear Judge Etchingham:

Pursuant to 29 CFR 102.16, Respondent Shamrock Foods ("Shamrock") hereby submits this emergency motion to continue the hearing currently scheduled in this matter to begin on September 8, 2015. Shamrock requests a brief continuance of one week, to Tuesday, September 15, 2015, on all of the grounds stated in its prior request and because a significant weather event beyond the control of Shamrock Foods has further prejudiced its ability to adequately prepare for the hearing.¹

Just and proper cause exists for granting the requested continuance.² Whereas Shamrock will suffer significant prejudice if the hearing is *not* continued, neither the General Counsel nor the Union will suffer prejudice from this brief continuance. In fact, the General Counsel will likely benefit from the continuance the extent that the continuance allows Shamrock to identify and gather documents responsive to the General Counsel's subpoena duces tecum ("SDT") served on Tuesday, August 25, 2015.

As outlined in its prior request, Shamrock's time to meaningfully prepare for trial was already limited. That limited time has been further cut short as Shamrock has effectively halted its hearing preparation to address the effects of a significant event on its facilities and operations.

¹ The original charge in this matter was filed on April 15, 2015. Approximately three months later, on July 27th, we received the Complaint and Notice of Hearing (the "Complaint"), scheduling the hearing for September 8th. On August 17, 2015 (three weeks before the scheduled hearing) Shamrock's counsel also received an amendment to the Complaint, which Shamrock timely answered.

² In the event that this Petition should be denied in whole or in part, Respondent respectfully requests that this Petition be made a part of the record in this case.

Specifically, on the evening of August 31, 2105, a storm called a "micro burst" hit the Phoenix metro area, including Shamrock's Arizona Foods Branch facility located at 2540 N. 29th Avenue, Phoenix AZ 85009 and Shamrock Farms (i.e., the Arizona Dairy Supply Chain Building), located at the corner of 27th Ave. and Encanto in Phoenix, AZ. Each of these facilities appear to be at issue in this case based on the Complaint and the STD which identifies the respondent's office facilities at issue to mean all office and warehouse facilities located in Phoenix, Arizona.³

As more fully outlined in the declaration of Mark Engdahl ("Engdahl Declaration") attached hereto, the storm caused significant physical damage to two of Shamrock's Phoenix offices and facilities including as follows:

- several trailers toppled over in the yard, resulting in fuel spills;
- several trucks were damaged by falling power lines;
- as many as 10 associate vehicles were damaged by flying debris;
- two loading dock doors (approximately 20 by 20 feet) were blown off, landing inside the Arizona Foods building;
- numerous power lines leading into the facility were severely damaged, many of them falling on top of buildings, on Shamrock trucks and trailers, or in the street;
- a power pole with an attached electrical transformer fell at Shamrock Farms, landing through the roof of a Shamrock truck;
- damage to fencing at Arizona Foods property;
- generator/light tower in parking lot fell to the ground; and
- windows busted out of all windjammer vans used for Shamrock courier services.

In addition to the foregoing several windows busted out of the tractors and another trailer fell over on its side at Shamrock's fleet service center. Due to this damage, Shamrock lost its ability to fuel its fleet for at least 10 hours. Photos of a portion of the physical damage described above are attached to the Engdahl Decl. as Exhibit "A."

The storm also had a significant impact on Shamrock's operations, either entirely halting or significantly hindering operations, including as follows:

- Significant portion of both facilities (Arizona Food and Shamrock Farms) are without power. Only portions of the facility have any operational functions through the use of emergency generators, emergency lights and extension cords feeding into the limited sources of electricity. Arizona Foods is currently functioning on generator power.

³ Notably, there has not petition filed in this case. Further, Respondent is not aware of the "unit" the Union purportedly seeks to represent.

- The administrative offices located at Arizona Foods, which provides administrative and/or Human Resources support for Arizona Foods and Shamrock Farms, are completely without power. Computers, information technologies and network systems are currently not operational. Indeed, Shamrock is currently unable to process and complete its payroll process.
- Power to Arizona Foods main telephone lines are not functioning, and the phones do not work. As such, customer service issues are currently being diverted out of the state.
- Arizona Foods purchasing operations have been diverted to a limited number of employees who are working through remote access from their homes.
- Receiving capabilities are limited to two of Arizona Food's five docks.
- Shipping operations were suspended for several hours, and are slowly increasing and not fully functional.

Due to the foregoing, all management personnel has been diverted to assisting with the operational recovery efforts.

Shamrock Foods has been in contact with Arizona Public Service, who has notified them that there is not an estimated time for the resolution of the power outage. Even after power is fully restored, restoring the facilities to their full operational capacity will take days.

Based on the foregoing, and because of the significant management and personnel support required to address and immediately remedy these unexpected and significant operational issues, Shamrock's preparation for the hearing has halted. At this time, Shamrock must focus on restoring its ability to adequately service its customers and meet its commitments to its employees by returning to 100% operational capacity as soon as possible. Its focus is also on working to ensure a safe and productive working environment for its employees in the aftermath of the storm.

A brief continuance of the hearing date should allow Shamrock to meet its commitments to its clients and employees, while preserving its right to meaningfully defend itself against the claims and allegations in the Complaint, many of which have significant due process implications. Of the more than fifty separate and distinct allegations listed in the *16 page* Complaint, the majority pertain to statements made by purported Company representatives. Section 8(c) of National Labor Relations Act recognizes an employer's right to free speech, as does the First Amendment to the United States Constitution. Denying Shamrock an adequate opportunity to prepare its defense therefore presents a significant risk that speech protected by the Act and by the Constitution will be improperly restrained. The requested extension of only one week may reduce this possibility. The resulting burden on the General Counsel and the Union, on the other hand, is slight (if it exists at all). Shamrock's requested extension accordingly should be granted, and the hearing should be postponed to at least September 15, 2016.

Notably, the weather event has also impeded Shamrock's ability to collect document in response to the Subpoena Duces Tecum served on Shamrock by the Board. Administrative and human resources personnel who were assisting with the identification and collection of the documents have been diverted to addressing issues related to the storm and/or not able to

access Shamrock's systems because their offices are entirely without power. By way of example:

- Melanie Grassi is facilitating the identification and collection of subpoenaed documents. Ms. Grassi was recently promoted (three weeks ago) to safety supervisor, which due to the storm, is requiring her to devote all of her time to addressing safety issues related to the impact of the storm. This includes monitoring the facility to ensure that any working areas still in use have sufficient light, electricity or other resources to maintain safety of the employees.
- Shamrock's HR Operations business partner has been tasked with identifying and collecting potentially relevant documents from Shamrock's storage facilities. Due to the storm, his efforts have been diverted to addressing storm-related issues including communicating with employees, coordinating with security, and walking the floor (larges portions of which are without power) to address operational issues.

Consistent with the foregoing, please note that Shamrock has objected to the SDT, largely on the grounds that the requests were overbroad, lacked relevance and were unduly burdensome (particularly given the limited time that Shamrock had to identify and collect responsive documents). Shamrock nonetheless continues with its good faith effort to identify, collect and prepare for production relevant and responsive documents. Its efforts have been considerably delayed by the storm.

For all of the foregoing reasons, and for good cause shown, Shamrock requests a minimum of a one-week continuance of the trial to September 15, 2015 to allow it to meaningfully prepare for the hearing and to identify, collect and produce documents requested pursuant to the SDT.

We appreciate your time and consideration of this matter. If you have any questions or need additional information, please do not hesitate to contact me.

Respectfully submitted,


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STATEMENT OF SERVICE

I, Hien Tran, declare:

I am employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 11601 Wilshire Boulevard, Suite 1400, Los Angeles, CA 90025-0509. On September 1, 2015, I served a copy of the within document(s): **DEFENDANTS SHAMROCK FOODS AND SHAMROCK FARMS DAIRY DIVISION'S EMERGENCY MOTION TO CONTINUE HEARING PURSUANT TO 29 CFR 102.16**

☐

by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below.

☐

by placing the document(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a **FEDERAL EXPRESS** agent for delivery.

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by transmitting via electronic mail the document(s) listed above to the e-mail address(es) set forth below on this date.

PLEASE SEE SERVICE LIST ATTACHED

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 1, 2015, at Los Angeles, California.



Hien Tran

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